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Memorandum

To : Mr. Ed King
Fuel Taxes Administrator

Date: March 23, 1993

From : Janet Vining
Senior Tax Counsel

Subject: **Application of the Oil Spill Prevention and Administration Fee to Bonded Jet Fuel Received at a Marine Terminal**

I am writing in response to your December 1, 1992 memorandum concerning the application of the Oil Spill Prevention and Administration Fee to bonded jet fuel received at a marine terminal and then used in international flights. For the reasons set forth herein, we conclude that the fee does not apply to such fuel.

Government Code Section 8670.40 imposes the Oil Spill Prevention and Administration fee on every person who owns crude oil at the time the crude oil is received at a marine terminal from within or outside the state, and upon every person who owns petroleum products at the time that those petroleum products are received at a marine terminal from outside the state. The fee is collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received. The terminal operator remits the fee to the State Board of Equalization on a monthly basis. No fee is due with respect to any crude oil or petroleum products if the person who would be liable to pay or collect the fee can establish that the fee has been collected by a terminal operator or paid to the Board. The owner of crude oil or petroleum products is liable for the fee until it has been paid to the Board, but payment to a marine terminal operator is sufficient to relieve the owner from further liability for the fee.

My understanding is that [redacted] imports jet fuel into California by vessel and sells it to airlines for use in international flights. The fuel enters the state under bond, pursuant to federal laws and regulations. It remains under bond in segregated storage at [redacted]'s Los Angeles Harbor

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terminal, and is shipped via pipeline to LAXFUEL's facility at the Los Angeles International Airport. The bonded jet fuel is used only on international flights.

In order to determine whether the Oil Spill Prevention and Administration Fee applies to the bonded jet fuel, it is necessary to review federal statutory and case law concerning the regulation of foreign commerce. Section 1309 of Title 19 of the United States Code provides that articles of foreign or domestic origin may be withdrawn, free from customs duties and Internal Revenue taxes, from any customs bonded warehouse or from continuous customs custody elsewhere than in bonded warehouses for supplies of aircraft registered in the United States or foreign countries which are actually engaged in foreign trade. (19 U.S.C. Section 1309(a)(1) and (a)(2)).

The United States Supreme Court discussed Section 1309, as well as other federal statutes and regulations involving foreign commerce, in McGoldrick v. Gulf Oil Corp. (1939) 309 U.S. 414. In that case, the Supreme Court rejected New York City's attempt to impose a sales tax on deliveries of fuel oil refined from crude petroleum imported from a foreign country and confined to warehouses under bond. The fuel was sold and delivered as ships' stores to vessels engaged in foreign commerce.

The Supreme Court noted that, had the crude oil not been imported under bond, it would, upon its manufacture, have become part of the common mass of property in the state and would have lost its distinctive character as an import. However, from the time of importation until the moment when the fuel oil was laden on vessels engaged in foreign trade, the imported petroleum and its product, the fuel oil, was segregated from the common mass of goods and property within the state, and was subject to the supervision and control of federal customs officers.

The Supreme Court found that the Federal Government had adopted multiple statutes and regulations, including the Revenue Act of 1932 and the Tariff Act of 1930, which afford a comprehensive scheme for the regulation of the importation of crude petroleum, its manufacture in bond into fuel oil, and its delivery as ships' stores to vessels in foreign commerce, all calculated to insure that the manufactured oil is devoted exclusively to that purpose. By laying a duty on imports, and then exempting imported oil, Congress acted to relieve the importer of the import tax so that the importer might meet

foreign competition in the sale of fuel as ships' stores. The Supreme Court found that,

... In furtherance of that end, Congress provided for the segregation of the imported merchandise from the mass of goods within the state, prescribed the procedure to insure its use for the intended purpose, and by reference confirmed and adopted customs regulations prescribing that the merchandise, while in bonded warehouse, should be free from state taxation. It is evident that the purpose of the congressional regulation of the commerce would fail if the state were free at any stage of the transaction to impose a tax which would lessen the competitive advantage conferred on the importer by Congress. McGoldrick v. Gulf Oil Corp., supra, at pp. 428-429.

The Supreme Court held that New York City could not impose its tax on the sale of the fuel oil since Congress's regulation of imported oil was

... tantamount to a declaration that in order to accomplish constitutionally permissible ends, the imported merchandise shall not become a part of the common mass of taxable property within the state, pending its disposition as ships' stores, and shall not become subject to the state taxing power. McGoldrick v. Gulf Oil Corp., supra, at p. 429.

The Supreme Court's analysis in McGoldrick v. Gulf Oil applies with equal force to the case at hand. From the time it enters the country, the bonded jet fuel is dedicated for use in airplanes engaged in foreign trade. Congress exempted such fuel from customs duties and other impositions in order to ensure that the importers of the fuel would remain competitive in the sale of fuel to airplanes engaged in foreign trade. The imposition of the Oil Spill Prevention and Administration Fee on such bonded jet fuel would conflict with the Federal Government's regulation of foreign commerce. The bonded jet fuel is, therefore, not subject to the fee.

Mr. Ed King

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Please let me know if you have any questions or would like to discuss this matter further.

Janet Vining

JV:wk

cc: Mr. James Black
Mr. Larry Augusta
Ms. Stella Levy